Supreme Court, U.S.
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No. 97-1278

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1997

INMATES OF THE SUFFOLK COUNTY JAIL et al.,

Petitioners,

vs.

RICHARD ROUSE, SHERIFF OF SUFFOLK COUNTY et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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REPLY BRIEF FOR PETITIONERS

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May 27, 1998

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REPLY BRIEF FOR PETITIONERS

The bulk of the opposition of the Solicitor General is devoted to defending the judgment below if review is granted. For the reasons set forth in the petition and in the opinion of the Ninth Circuit in Taylor v. United States, Nos. 97-16069; 97-16071, 1998 WL 214578 (May 4, 1998), we respectfully disagree. But more fundamentally, the Court need only decide at this time whether it should review the decision below, not how it should resolve the case if review is granted.

In response to the statutory issue raised in this petition, the Solicitor General argues that, because of a recent amendment, the question is of no continuing importance (Opp. at 7). In our view, the amendment only sharpens the need for review. It is significant primarily because it raises the barrier even higher to any plaintiff who seeks to maintain an existing decree because, in effect, it directs the courts to revoke the decree unless the plaintiff can show that there is an existing violation of the decree, no matter how likely it is that once the judicial finger is taken from the dike, the constitutional violations will pour through once again. It is not an answer, as the Solicitor General suggests, (id.), that plaintiffs "are free to seek [new] relief" by filing a new lawsuit after a decree has been terminated. After all, the whole purpose of having a decree is that violations are subject to the power of contempt and need not be the subject of an entirely new lawsuit. Yet under the amended statute, persons such as petitioners will lose the benefit of the consent judgment and the bargained-for rights contained in it, so long as the defendant is not then in violation of the decree. Whatever the 1997 amendment may do to the

statutory issue, it greatly increases the constitutional problems, as the Government itself recognized in its brief in the court of appeals in this very case (Pet. 16).[1/]

The Solicitor General offers two reasons for denying the petition on the constitutional issue, neither of which suffices. First, he notes that the Court has previously denied review on the issue of the constitutionality of the Prison Litigation Reform Act ("PLRA") in Plyler v. Moore, 100 F.3d 365 (4th Cir. 1996), cert. denied, 117 S. Ct. 2460 (1997), but fails to note that

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[1/] According to the legislative history cited by the Solicitor General, the amendment was specifically aimed at the statutory gloss advanced by the United States in the courts of appeals which, the Government then argued, was necessary to avoid "the serious question whether Congress may limit the court's remedial authority to effectively redress constitutional violation." (Brief for the United States as Intervenor at 16). Compare the precise argument made by the United States below with the language of the House Conference Report quoted by the Solicitor General in his Opposition. See Brief for the United States as Intervenor at 16 ("§3626(b)(3) should not be read to require a court to terminate relief . . . where the court finds that the defendant is poised to resume its unconstitutional conduct.") (emphasis added) and H.R. Conf. Rep. No. 405, 105 Cong., 1st Sess. 133 (1997) (prospective relief should not continue even if "government officials are 'poised' to resume a prior violation of federal rights") (emphasis added), quoted at Opp. at 7.

Plyler was the first court of appeals to consider the issue, and now six other courts have spoken, including the Second Circuit which reheard Benjamin v. Jacobson, 124 F.3d 162 (2d Cir. 1997), in early March, and the Ninth Circuit which recently ruled in Taylor that the PLRA was unconstitutional. The denial of review in Plyler represents nothing more than this Court's traditional reluctance to decide major constitutional questions until they have been considered by several courts of appeals.

Second, the Solicitor General suggests that the present conflict may not last because rehearing en banc will be sought in the Ninth Circuit and "there is a reasonable possibility that the Ninth Circuit will grant en banc review in Taylor and eliminate the conflict in the circuits . . ." (Opp. at 12). Aside from the fact that there is nothing but speculation to support such a "possibility," and that there is at least an equal "possibility" that the en banc Second Circuit will find the PLRA unconstitutional, the Solicitor General's position should be rejected for another reason: it dooms the district and appeals court judges in the remaining five circuits -- the Third, Fifth, Seventh, Tenth and District of Columbia -- to devote countless hours to these difficult issues, which will inevitably be fully litigated in each circuit. It will also require eleven judges of the Ninth Circuit to sit en banc, and it will require the Second Circuit to continue its deliberations and opinion writing in the case now pending sub judice.

In sum, the time has come for this Court to accept review and decide what

everyone recognizes is a vital constitutional question: are there any constitutional limits to Congressional power to reopen equitable judgments, and if so, did the PLRA exceed them? There has been more than enough litigation on this issue. No useful purpose would be served by mandating that the lower courts continue to pass on this question, and many additional burdens would be imposed on federal judges and the parties if review is postponed to another day. Only this Court can finally resolve the constitutional question, and it should do so now in this case.

Conclusion

For the reasons stated above and in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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